

United States Senate

WASHINGTON, DC 20510-4802

January 15, 2010

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Solis,

I applaud your commitment to ending black lung disease and delivering on the promise of the 1969 Coal Act to prevent new black lung cases and prevent further development of black lung among miners already suffering from this disease. I share your commitment and look forward to working with you to achieve these critically important goals. There is so much we can do right now to help the miners impacted by black lung disease and their families, and I want to be sure that the necessary federal attention and resources are devoted to this effort.

Currently, the Department of Labor's Mine Safety and Health Administration (MSHA) Black Lung Benefits Program is a vital source of compensation for miners suffering from black lung disease. Unfortunately, average claim approval rates have historically been below 15%, with a number of prominent cases taking more than 25 years to resolve. In June 2008, I requested that the Government Accountability Office (GAO) conduct a comprehensive review of the Department of Labor's administration of the Black Lung Benefits Program and issue recommendations to Congress on ways to improve the claims process. As you know, the final GAO report was released in October of 2009 and contained seven administrative and structural recommendations:

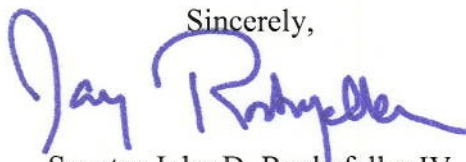
1. Take steps to reduce the number of black lung cases remanded from the Benefits Review Board (BRB) to the Office of Administrative Law Judges (OALJ) by convening a group to determine the causes of these remands and develop solutions for reducing their incidence.
2. Obtain summary information on how long it takes to resolve claims using its current automated system to routinely track cases through the entire adjudication process and develop associated performance measures.
3. Consider shortening the time required to schedule hearings for black lung cases by examining the feasibility of using video conferencing technology to streamline the scheduling of hearings in remote areas.
4. Based on feedback from relevant black lung medical stakeholders, including approved diagnostic providers and Black Lung Clinics, develop options for improving how doctors' opinions are documented on DOL's medical evaluation form.

5. Evaluate and report on claimant access to legal and lay representation by implementing changes to the data management systems of the Office of Workers' Compensation Programs (OWCP), OALJ, and BRB that will permit accurate data about claimant representation throughout the claims and appeals process.
6. Evaluate and address blood gas testing practices that may contribute to inaccurate disability test readings by implementing a feedback mechanism to record and track complaints from federal black lung claims stakeholders about testing practices.
7. Examine the following issues and evaluate the potential for proposing structural changes to the program to Congress:
 - options for enhancing incentives for attorneys and lay representatives to take claimants' cases; areas that could be explored include alternate pay structures for attorneys and an examination of federal support for lay representation;
 - the costs and benefits of allowing compensation for partial disability and settlement of claims;
 - the clinical limitations in documenting evidence to prove pneumoconiosis and total disability; and
 - new and previous proposals to reduce the amount of time it takes to resolve claims and appeals, including requiring complete evidentiary development at the primary claims processing phase and limiting the need for appeals.

In response to the recommendations contained in the GAO report, I am writing to request the following: a detailed update on the Department of Labor's progress on the six administrative recommendations from the GAO, a specific agency timeline for full implementation of the six administrative recommendations from the GAO, a more detailed explanation on why the Department disagrees with the GAO's second recommendation regarding the claims tracking process, and the Department of Labor's plans regarding the inclusion of recommendations for structural changes to the black lung program in its fiscal year 2011 budget request to Congress.

I greatly appreciate your prompt consideration of this request and ask that you respond no later than January 31, 2010. Please feel free to contact Jocelyn Moore or Pat Bond of my staff at (202) 224-6427 with any questions. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Rockefeller". The signature is fluid and cursive, with the first name "Jay" and last name "Rockefeller" clearly distinguishable.

Senator John D. Rockefeller IV